

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**VICTOR DELGADILLO, *Applicant***

**vs.**

**HONDA WORLD; SECURITY NATIONAL INSURANCE COMPANY,  
administered by AMTRUST, *Defendants***

**Adjudication Number: ADJ11281231  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the September 30, 2024 Findings of Fact wherein the workers' compensation administrative law judge (WCJ) found that defendant "did not act in bad faith, frivolously, or with the sole intention to cause unnecessary delay" when applicant's medical treatment was delayed due to a coding error which misidentified applicant's medical as closed due to settlement via a Compromise and Release Agreement. (Findings of Fact and Opinion on Decision (FOF & OOD), pp. 2, 7.)

Applicant contends that defendant willfully violated its regulatory obligations under WCAB Rule 10109 (Cal. Code Regs., tit. 8, § 10109) when failing to respond to applicant's repeated requests to rectify the error over a 2-month period. Applicant further contends that defendant's conduct is sanctionable under Labor Code<sup>1</sup> sections 5813, 5814, and 5814.5 and WCAB Rule 10421(b) (Cal. Code Regs., tit. 8, § 10421(b)).

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise indicated.

We have reviewed the record in this matter and have considered the Petition for Reconsideration (Petition) and the contents of the Report. For the reasons discussed in the Report, which we adopt and incorporate herein, and for the reasons discussed below, we will deny the Petition.

## FACTS

Applicant, while employed by defendant as an auto body shop technician on February 19, 2018, sustained an industrial injury to the lumbar spine, psyche, and hypertension.

On October 16, 2023, applicant's primary treating physician, Dr. Lawrence Miller, prescribed hydrochlorothiazide, atenolol and Lipitor for applicant's "hypertensive cardiovascular disease." (Report, p. 3.) The hydrochlorothiazide and Lipitor were noncertified by utilization review on October 26, 2023. The atenolol was authorized by utilization review on October 28, 2023.

On November 21, 2023, the claim was settled by way of Stipulations with Request for Award. Per the settlement documents, future medical treatment was to be provided for applicant's injuries.

On November 28, 2023, a letter was sent by Amtrust erroneously advising applicant that the claim was resolved by way of a Compromise and Release Agreement. (Exhibit 9.) The letter further indicated that since settlement had been paid in full, no further benefits would be provided. (*Ibid.*)

On December 8, 2023, applicant's attorney sent a letter to defendant inquiring about the November 28, 2023 letter and requesting confirmation that the claim was resolved via Stipulations with Request for Award with benefits to be provided accordingly. (Exhibit 10.) At the time of the letter, applicant and applicant's attorney had apparently not been served copies of the approved settlement documents.

On December 15, 2023, a notice was issued by defendant to applicant indicating that utilization review of the atenolol, hydrochlorothiazide, and Lipitor was deferred as "liability for the diagnosis for which treatment [was] recommended" was in dispute. (Exhibit 4.)

On December 19, 2023, applicant's attorney sent a follow up letter to defendant indicating that they had not been served with the approved settlement documents. (Exhibit 3.) Applicant's

attorney also noted that hypertension was an admitted injury and the October 26, 2023 utilization review, untimely. (*Ibid.*)

On January 17, 2024, defendant sent a letter to applicant's attorney indicating that they were working to resolve the issue. Thereafter, on January 31, 2024, defendant sent a letter to applicant indicating that the atenolol, hydrochlorothiazide, Lipitor, and follow up visit were authorized on a one-time basis.

On March 20, 2024, applicant filed a petition seeking penalties under sections 5814 and 5814.5 and sanctions under section 5813 for delays in medical treatment. A declaration of readiness to proceed to mandatory settlement conference was also filed.

On August 14, 2024, the matter proceeded to trial on the issue of sanctions for defendant's "alleged bad faith actions" and tactics "alleged to be frivolous and solely intended to cause unnecessary delay." (Minutes of Hearing and Summary of Evidence (MOH & SOE), August 14, 2024, p. 2.) The handling claims adjuster, Marlon Green, testified, in pertinent part, as follows:

He was aware that defendant has a duty to provide care to the applicant for industrial injuries. He was aware of his obligation to be proactive in his investigation of a claim and the applicant's needs. He was aware that he has a duty to provide timely care. He did not believe that there was an untimely provision of care in this case.

(*Id.* at pp. 7-8.)

The witness acknowledged that the treatment was improperly denied. He recalled a November 28, 2023, letter stating that the applicant's claim was resolved by Compromise and Release and that defendant was no longer liable. To the best of the witness's recollection, the applicant had two claims, one of which he believed did resolve by Compromise and Release.

(*Id.* at p. 7.)

According to the claims file, the Request for Authorization was received on October 23, 2023, and was sent to UR on October 26, 2023. The delay would have been as a result of him not seeing the Request for Authorization until the 26<sup>th</sup> of October. He became aware of a coding issue, which resulted in one of the claims being identified as resolved by Compromise and Release. He became aware of this issue in 2024. When this issue became known to him, he changed the coding from denied to accepted.

The November 28, 2023, letter about the case being settled by C and R would have been issued as a clerical error. It was never his intention to deny treatment to the applicant.

(*Id.* at p. 9.)

Based upon the evidence presented at trial, including Mr. Green’s testimony, the WCJ determined that defendant’s actions were the result of either mistake, inadvertence, and/or excusable neglect and were not frivolous, made in bad-faith, or solely intended to cause unnecessary delay. (Findings of Fact and Opinion on Decision (FOF & OOD), pp. 7-8.)

## DISCUSSION

### I.

Preliminarily, former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
  - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on November 8, 2024, and 60 days from the date of transmission is January 7, 2025. This decision was issued by or on January 7, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on November 8, 2024, and the case was transmitted to the Appeals Board on November 8, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 8, 2024.

## II.

Turning now to the merits of the Petition, section 5813 provides that “[t]he workers’ compensation referee or appeals board may order a party, the party’s attorney, or both, to pay any reasonable expenses, including attorney’s fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).)

WCAB Rule 10421, promulgated under section 5813, discusses the nature and scope of conduct that is subject to sanctions. Subdivision (b) provides that “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).) Subdivision (b)(4) further outlines that such actions include, failure to “comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director, or with any award or order of the Workers' Compensation Appeals Board that Under WCAB Rule 10421.” (*Id.*) Under WCAB Rule 10421, the WCJ and the Appeals Board have the authority to order payment of reasonable expenses, including attorney’s fees and costs, as well as section 5813 sanctions. An exception, however, exists for those actions caused by “*mistake, inadvertence, surprise or excusable neglect.*” (*Id.*, emphasis added.)

In the instant matter, the claims adjuster for the case, Marlon Green, testified on behalf of defendant that “the cause one of the claims being identified as closed via Compromise and Release” was “the result of a coding error.” (MOH & SOE, August 14, 2024, p. 9.) Mr. Green further testified that upon learning of this error, he rectified the issue and at no point intended to

“deny treatment to the applicant.” (*Id.*) Based upon Mr. Green’s testimony and the evidence submitted by both parties, the WCJ determined that defendant’s actions were the result of mistake, inadvertence, and/or excusable neglect. (FOF & OOD, p. 7.) We agree with the WCJ. As such, we also find that defendant’s actions are not sanctionable under section 5813 or WCAB rule 10421 as they are not frivolous, made in bad faith, or intended to cause unnecessary delays.

With respect to section 5814 penalties and section 5814.5 attorney’s fees, these issues must be adjudicated in the first instance at the trial level. Although the issues were raised by applicant in the March 20, 2024 petition for sanctions, they were not listed as issues in the pretrial conference statement or addressed during the August 14, 2024 trial. As such, they are premature for reconsideration. Accordingly, applicant’s Petition is denied.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the September 30, 2024 Findings of Fact is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JANUARY 3, 2025**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**VICTOR DELGADILLO  
LAW OFFICES OF HENRY KHALILI  
MICHAEL SULLIVAN & ASSOCIATES**

**RL/cs**

I certify that I affixed the official seal of  
the Workers' Compensation Appeals  
Board to this original decision on this date.  
CS

**REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE  
ON PETITION FOR RECONSIDERATION**

**I.**

**INTRODUCTION**

- |                                                                                                                                             |   |                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------|
| 1. Applicant's occupation                                                                                                                   | : | Body Shop Technician                   |
| Applicant's Age                                                                                                                             | : | 59                                     |
| Date of Injury                                                                                                                              | : | February 19, 2018                      |
| Parts of Body Injured                                                                                                                       | : | lumbar spine, psych, and hypertension. |
| Manner in which it occurred                                                                                                                 | : | Specific Incident                      |
| 2. Identity of Petitioner                                                                                                                   | : | VICTOR DELGADILLO                      |
| Timeliness                                                                                                                                  | : | Petition is timely                     |
| Verification                                                                                                                                | : | Petition is verified                   |
| 3. Date of Order                                                                                                                            | : | September 30, 2023                     |
| 4. Petitioner contends that the WCJ erred in finding that:                                                                                  |   |                                        |
| a) The defendant's delay of medical treatment did not rise to the level of bad faith for which sanctions should be imposed, and             |   |                                        |
| b) The Undersigned Judge did not address the applicant's entitlement to § 5814 penalties or § 5814.5 attorney fees for enforcing the Award. |   |                                        |

**II**

**PROCEDURAL BACKGROUND**

On November 13, 2023, the applicant and defendant settled by Stipulations with Request for Award,<sup>2</sup> for which an Award was issued in favor of the applicant on November 21, 2023.<sup>3</sup>

On January 10, 2024, the applicant filed a Declaration of Readiness to proceed, asserting that the applicant sought enforcement of the stipulated future medical Award for hypertension as the defendant now disputes liability. The applicant further asserted that there was no timely UR conducted for Dr. Miller's RFA dated October 16, 2023. Penalties and sanctions were asserted and reserved.<sup>4</sup>

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<sup>2</sup> EAMS Doc ID: 49064796, STIPULATIONS WITH REQUEST FOR AWARD DOI post 1-1-2013, Dated 11/13/2023

<sup>3</sup> EAMS Doc ID: 77381868, ADJ11921987 - VICTOR DELGADILLO AWARD, Dated 11/21/2023

<sup>4</sup> EAMS Doc ID: 49886608, DECLARATION OF READINESS TO PROCEED TO EXPEDITED HEARING, Dated 1/10/2024



An expedited hearing was held before the Undersigned Judge on January 29, 2024. At the hearing, the defendant agreed to authorize all items outlined in Dr. Miller's October 16, 2023, RFA, noting that the defendant originally approved Atenolol on October 28, 2023, but that approval had expired as the applicant was unable to fill the prescription. The defendant further agreed to review out-of-pocket expenses regarding the applicant's high blood pressure medication for reimbursement. The applicant agreed to submit a mileage reimbursement form and would submit IDs for receipts of previously obtained medications. Costs and Sections were deferred, and Hypertension was affirmed as an accepted body part per the November 21, 2023, Award.<sup>5</sup>

On March 20, 2024, the applicant filed a Declaration of Readiness to proceed, asserting that the applicant sought adjudication of the 3/20/24 penalty petition regarding unreasonable denial of care and AA fees for enforcing stipulated awards.<sup>6</sup>

The matter was set for a Mandatory Settlement Conference on May 28, 2024, and at that hearing was set for trial on the applicant's petition for cost and sanctions. The trial was set for July 17, 2024, before the Undersigned Judge.<sup>7</sup>

Trial was continued to July 24, 2024, at the request of the defendant due to a calendar conflict.<sup>8</sup> Trial was continued a second time to August 14, 2024, at the request of the defendant due to a calendar conflict of the claims adjuster who intended to testify.<sup>9</sup>

The matter proceeded on the record on August 14, 2024. The sole issue submitted to the Undersigned Judge for determination was "Sanctions for alleged bad faith actions and tactics that are alleged to be frivolous and solely intended to cause unnecessary delay."<sup>10</sup>

On September 30, 2024, the Undersigned Judge issued his FINDINGS of FACT, finding that the defendant did not act in bad faith, frivolously, or with the sole intention to cause unnecessary delay.

The applicant filed his Petition for Reconsideration on October 24, 2024.

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<sup>5</sup> EAMS Doc ID: 77598297, DELGADILLO, VICTOR-MOH (1.29.24), Dated 1/29/2024

<sup>6</sup> EAMS Doc ID: 51018202, DECLARATION OF READINESS TO PROCEED, Dated 3/20/2024

<sup>7</sup> EAMS Doc ID: 78055157, DELGADILLO VICTOR-MOH (5.28.24) Dated 5/28/2024

<sup>8</sup> EAMS Doc ID: 78055246, VICTOR DELGADILLO-MOH (CONTINUANCE), Dated 6/12/24

<sup>9</sup> EAMS Doc ID: 52907418, Correspondence to WCAB, Dated 7/17/2024

<sup>10</sup> Minutes of Hearing and Summary of Evidence, 8/14/24, Page 2

### III FACTUAL BACKGROUND

The applicant was treating with Dr. Lawrence Miller as his primary treating physician. Dr. Miller diagnosed the applicant with Hypertensive cardiovascular disease, Hyperlipidemia, Lumbar radiculopathy, and Bilateral knee DJD.

On October 16, 2023, Dr. Miller prescribed Hydrochlorothiazide 25 mg #30, Atenolol 25 mg #30, and Lipitor 20mg for the applicant's Hypertensive cardiovascular disease. On October 23, 2023, the Request for Authorization was served via facsimile to 888-941-4218.<sup>11</sup>

On October 28, 2023, a Utilization Review was issued approving Dr. Miller's Request for Authorization for Atenolol 25mg.<sup>12</sup>

On November 3, 2023, a Utilization Review was issued stating that a request had been received on October 26, 2023. The Utilization Review, stated it was non-certifying the Hydrochlorothiazide 25 mg #30 and Lipitor 20mg.<sup>13</sup>

The Utilization Review provided that the CA MTUS is silent regarding the medication. As such, the Official Disability Guidelines (ODG) were consulted. The Utilization Review stated the claimant had previously been proscribed management for hypertension. Pertinent medical information revealed the claimant had previously been prescribed this medication; however, response to its use showing functional benefit was not highlighted to support ongoing usage.<sup>14</sup>

The Utilization Review stated that the applicant's physical examination was normal, and that documentation did not highlight the blood pressure measurements before taking these medications to show comparable objective benefits to its use, and the blood pressure highlighted for review was within normal limits. Additionally, it stated that there was a lack of significant abnormalities on examination to warrant medical necessity. As such, the review stated that medical necessity had not been established for the request for Hydrochlorothiazide 25 mg #30 and Lipitor 20mg.<sup>15</sup>

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<sup>11</sup> APPLICANT'S 1: PTP report from Dr. Lawrence Miller with Request for Authorization and fax confirmation, dated 10/16/2023

<sup>12</sup> DEFENSE A: Utilization Review approval of Atenolol, dated 10/28/2023.

<sup>13</sup> APPLICANT'S 7: UR denial, dated 11/3/2023

<sup>14</sup> APPLICANT'S 7: UR denial, dated 11/3/2023

<sup>15</sup> APPLICANT'S 7: UR denial, dated 11/3/2023

On November 21, 2023, an Award<sup>16</sup> was issued based on the Stipulations with Request for Award filed by the parties in which the parties stipulated injury to the applicant's lumbar spine per PQME report of Dr. Geiger, hypertension per PQME report of Dr. Meth and psyche as a compensable consequence of orthopedic injuries.<sup>17</sup>

On November 28, 2023, a letter was sent to the applicant advising the applicant that his Workers' Compensation claim was resolved by means of Compromise and Release approved by the Division of Workers' Compensation on November 21, 2023. That his Award had been paid in full and that the defendant was no longer required to provide or pay for any benefits related to your work injury of February 19, 2018.<sup>18</sup>

On December 15, 2023, a NOTICE: Disputed Liability - Utilization Review Deferred was issued by the defendant, asserting that liability for the diagnosis for which treatment is recommended was disputed.<sup>19</sup>

On December 17, 2023, the applicant's attorney sent a communication to defense counsel advising counsel of the letter issued by the defendant and requesting assurances that the defendant acknowledges that the claim was, in fact, resolved by Stipulation and Request for Award.<sup>20</sup>

On December 19, 2023, the applicant's attorney sent a second communication to defense counsel advising counsel that he had not received service of the Stipulated Awards. The applicant's attorney advised defense counsel that the applicant's hypertension is an admitted body part for the specific injury claim and that the deferral was based on a dispute of liability for hypertension. The applicant's attorney further advised the defendant that the UR denial was untimely, even assuming that it was not received until October 26, 2023.<sup>21</sup>

On January 8, 2024, the applicant's attorney's office sent an Email to the defendant's attorney requesting a response to the December 19, 2023, letter.<sup>22</sup>

On January 17, 2024, defense counsel sent a letter advising the applicant's attorney that efforts to address the issues raised in counsel's December 19, 2023, letter were being undertaken.<sup>23</sup>

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<sup>16</sup> EAMS Doc ID: 77381952, ADJ11281231 - VICTOR DELGADILLO AWARD, Dated 11/21/2023

<sup>17</sup> EAMS Doc ID: 49064797, 20231103 Stipulation with Request for Award (Fully Executed). Dated 11/13/2023

<sup>18</sup> APPLICANT'S 9: AmTrust letter to injured worker, dated 11/28/2023

<sup>19</sup> APPLICANT'S 4: AmTrust UR deferral, dated 12/15/2023

<sup>20</sup> APPLICANT'S 10: Applicant attorney's letter to Defense attorney, dated 12/7/2023

<sup>21</sup> APPLICANT'S 3: Applicant attorney's letter to Defense attorney with Proof of Service, dated 12/19/2023

<sup>22</sup> APPLICANT'S 2: Applicant attorney's e-mail to Defense attorney, dated 1/8/2024

<sup>23</sup> DEFENSE C: Correspondence to Applicant attorney, dated 1/17/2024.

On January 31, 2024, defense counsel sent a letter confirming that the defendant has authorized on a one-time basis the treatment recommended on the RFA signed and submitted by Dr. Miller on October 16, 2023, i.e., Hydrochlorothiazide, Lipitor, follow-up visit, and Atenolol. The letter noted that the Atenolol was previously authorized on October 28, 2023. However the authorization expired, and the applicant did not fill the prescription.<sup>24</sup>

The handling claims adjuster, Marlon Green, was called as a witness. Mr. Green testified that he did not recall Dr. Miller's Request for Authorization. However, he has no reason to dispute that it was faxed to their office.<sup>25</sup>

Mr. Green acknowledged that the treatment was improperly denied. He recalled a November 28, 2023, letter stating that the applicant's claim was resolved by Compromise and Release and that the defendant was no longer liable. To the best of the witness's recollection, the applicant had two claims, one of which he believed was resolved by Compromise and Release.<sup>26</sup>

The Court notes that the applicant did have a second claim and that the second claim, case number ADJ11921987, was resolved by way of Stipulations with Request for Award, which was approved on November 21, 2023.<sup>27</sup>

Mr. Green did not recall receiving the applicant's letter of December 7, 2023.<sup>28</sup> Mr. Green did not recall what investigation he did or if there was any writing showing his response.

Mr. Green did not recall sending a letter in December of 2023 stating that the request for medications was being deferred. The UR department would have sent this letter, and his name would have been auto-populated onto it. Mr. Green does not review medical treatment determinations. His role in medical reports is only whether or not to send them to the utilization review department.<sup>29</sup>

Mr. Green did not recall receiving the December 19, 2023, letter from the applicant.<sup>30</sup> Mr. Green did not recall what actions were taken to correct the authorization error.<sup>31</sup>

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<sup>24</sup> DEFENSE D: Correspondence to Applicant attorney, dated 1/31/2024

<sup>25</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 8, Lines 4-6

<sup>26</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 8, Lines 11-14

<sup>27</sup> EAMS Doc ID: 77381868, ADJ11921987 - VICTOR DELGADILLO AWARD, Date 11/21/2023

<sup>28</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 8, Lines 15-16

<sup>29</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 8, Lines 19-23

<sup>30</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 8, Lines 24-25

<sup>31</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 9, Line 2

The November 28, 2023, letter about the case being settled by Compromise and Release would have been issued as a clerical error.<sup>32</sup> Mr. Green became aware of a coding issue, which resulted in one of the claims being identified as resolved by Compromise and Release in 2024.<sup>33</sup>

#### IV

#### DISCUSSION

##### **Delay in the provision of care**

The applicant asserts that the Undersigned Judge erred in finding that the defendant's delay of medical treatment did not rise to the level of bad faith for which sanctions should be imposed.

The workers' compensation referee or appeals board may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.<sup>34</sup>

However, the assessment of a sanction may be improper if the actions are the result of mistake, inadvertence, surprise, or excusable neglect.<sup>35</sup>

The Undersigned Judge found that the initial denial of medical care was the result of a coding error that caused the applicant's claim to be identified as closed via Compromise and Release and that this error was the result of a mistake, was inadvertent and/or was excusable neglect. As such, the Undersigned Judge found that the coding error was not a bad-faith action or tactic that was frivolous or solely intended to cause unnecessary delay.

The Undersigned Judge then addressed the assertion that the period of time needed to correct the coding error after the applicant advised the defendant that there was a problem and requested its correction, 53 days, was a bad-faith action or tactic that was frivolous or solely intended to cause unnecessary delay.

As previously stated, the applicant's attorney sent a communication addressed to the defendant's attorney on December 7, 2023, advising counsel that the applicant's hypertension was

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<sup>32</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 9, Line 18-19

<sup>33</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 9, Line 15-16

<sup>34</sup> California Labor Code Section 5813

<sup>35</sup> 8 CCR 10421

an admitted body part for the specific injury claim and that the deferral issued by the defendant was inappropriately based on a dispute of liability for hypertension. The applicant's attorney further advised the defendant that UR's denial was untimely, even assuming that it was not received until October 26, 2023.<sup>36</sup>

The evidence shows that as of December 7, 2023, the defendant was made aware that medical treatment had potentially been denied or deferred for an invalid reason.

On January 10, 2024, the applicant filed a Declaration of Readiness to Proceed to Expedited Hearing seeking enforcement of the stipulated future medical Award for hypertension.<sup>37</sup>

The Expedited Hearing was held on January 29, 2024, at which the defendant agreed to authorize all items outlined in Dr. Miller's October 16, 2023, RFA. The stipulation noted that the defendant initially approved Atenolol on October 28, 2023, but that the approval had expired as the applicant was unable to fill the prescription.<sup>38</sup> This was 41 days after the defendant was made aware that there was an issue with the treatment authorizations.

The Court of Appeals in the case of Billups v. Workers' Compensation Appeals Bd., 75 Cal. Comp. Cases 650 stated that "[s]ection 5813 sanctions are appropriately awarded where a party incurs expenses, including attorney's fees and costs, as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Board Rule 10561 defines a 'bad faith action or tactic' as 'one that results from a willful failure to comply with a statutory or regulatory obligation or from a willful intent to disrupt or delay the proceedings of a [sic] Workers' Compensation Appeals Board' or 'one that is done for an improper motive or is indisputably without merit.'"<sup>39</sup>

The Appeals Board, citing Billups, has stated that "[t]he word, 'willful' as used in [WCAB] Rule 10561 is significant. It denotes conduct that is beyond negligence, carelessness, or inadvertence."<sup>40</sup>

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<sup>36</sup> APPLICANT'S 3: Applicant attorney's letter to Defense attorney with Proof of Service, Dated 12/19/2023

<sup>37</sup> EAMS Doc ID: 49886608, DECLARATION OF READINESS TO PROCEED TO EXPEDITED HEARING Dated 1/10/2024

<sup>38</sup> AMS Doc ID: 77598297, DELGADILLO, VICTOR-MOH Dated 1/29/2024

<sup>39</sup> Billups v. Workers' Compensation Appeals Bd., 75 Cal. Comp. Cases 650, 653-654

<sup>40</sup> Van Dyk v. Cal. Men's Colony, 2017 Cal. Wrk. Comp. P.D. LEXIS 51, \*11-12 & McKinney v. Enter. Rent-A-Car of San Francisco, 2016 Cal. Wrk. Comp. P.D. LEXIS 495, \*22-23

In his determination, the Undersigned Judge noted that there is a higher standard for imposing sanctions and costs than simple excusable neglect. The actions or tactics must be shown to be intentional or willful.<sup>41</sup>

At the time of trial, the claims examiner, Mr. Green, testified that according to the claims file, the Request for Authorization was received on October 23, 2023, and was sent to UR on October 26, 2023.

Mr. Green acknowledges the untimeliness of the review, stating that this delay would have been a result of his not seeing the Request for Authorization until October 26. As to the coding mistake, Mr. Green testified that he became aware of a coding issue, which resulted in one of the claims being identified as resolved by Compromise and Release, in 2024. When the coding error became known to him, he changed the coding from denied to accepted.<sup>42</sup>

Mr. Green testified that the November 28, 2023, letter about the case being settled by C and R would have been issued as a clerical error. It was never his intention to deny treatment to the applicant.

Based on the evidence submitted, there is no evidence that Mr. Green's actions were carried out for an improper motive or were beyond negligence, carelessness, or inadvertence. There is no evidence that Mr. Green's actions were intended to disrupt or delay the proceedings of a Workers' Compensation Appeals Board.

The evidence presented at trial was that the 53-day delay in the provision of care was not beyond negligence, carelessness, or inadvertence. As such, the delay in the provision of care was not a bad faith action or tactic.

Based on the above, the Undersigned Judge was not in error in finding that the defendant's delay in medical treatment did not rise to the level of bad faith for which sanctions should be imposed.

**Penalties and attorney fees pursuant to labor code § 5814.5 and § 5814**

The applicant has asserted that the Undersigned Judge did not address the applicant's entitlement to Labor Code § 5814 penalties or § 5814.5 attorney fees for enforcing the Award.

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<sup>41</sup> Tober v. Garvey School District (administered by York) (6/8/10) 2010 Cal. Wrk. Comp. P.D. LEXIS 260

<sup>42</sup> Minutes of Hearing and Summary of Evidence, 8-14-24. Page 9, Line 12-17

The issue of the applicant's entitlement to penalties and attorney fees for an unreasonable delay in providing benefits was not identified as an issue to be submitted to the Undersigned Judge at the time the matter proceeded on the record.

A review of the 1st Amended Pre-Trial Conference Statement, reviewed and signed by both parties and the Undersigned Judge on August 14, 2024, identified the sole issue to be submitted for determination was "Sanctions for alleged bad faith actions and tactics that are alleged to be frivolous and solely intended to cause unnecessary delay."<sup>43</sup>

As the issue of the applicant's entitlement to penalties and attorney fees for an unreasonable delay in providing benefits was not submitted to the Undersigned Judge for determination, the Undersigned Judge was not in error by not addressing penalties and attorney fees pursuant to Labor Code §5814 and §5814.5.

**Failure to comply with the designated service requirements of 8 CCR § 10629**

The applicant has asserted that the Undersigned Judge did not address the defendant's failure to serve the Stipulated Award pursuant to 8 CCR§ 10629 timely. The applicant has asserted that this failure is a pattern of behavior that is frivolous and warrants sanction under§ 5813.

The Undersigned Judge approved the Stipulations with Request for Award on November 21, 2023, and issued an Award on the same date.<sup>44</sup>

The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with rule 10628. Within 10 days from the date on which designated service is ordered, the person designated to make the service shall serve the document and shall file the proof of service.<sup>45</sup>

According to the evidence submitted, the defendant served the Awards on November 28, 2023, on the applicant at 1143 Rosa Circle Corona, CA 92882, and on the applicant's attorney at 2107 N. Broadway Suite 103, Santa Ana, CA 92706.<sup>46</sup>

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<sup>43</sup> Minutes of Hearing and Summary of Evidence, 8/14/24, Page 2 & 1st Amended Pre-Trial Conference Statement dated August 14, 2024

<sup>44</sup> EAMS Doc ID: 77381868, ADJ11921987 - VICTOR DELGADILLO AWARD, Date 11/21/2023

<sup>45</sup> 8 CCR§ 10629

<sup>46</sup> APPLICANT'S 5: Defendants' Proof of Service of Award, dated 11/28/2023.



2107 N. Broadway Suite 103, Santa Ana, CA 92706 was the address provided by the applicant's attorney in the Applications for Adjudication of Claim.<sup>47</sup>

A review of the Board's file shows that no change of address was filed by the applicant's attorney. The first inclination that the applicant's attorney's address was anything other than what was provided in the Applications for Adjudications was in the Stipulations with Request for Award, which provided a new address of 17151 Newhope St Ste 105, Fountain Valley, California, United States, 92708.<sup>48</sup>

The Award shows that the Award was served by the Appeals Board on November 21, 2023, on Michael Sullivan Fullerton via Email and Henry Khalili Fountain Valley via US Mail.<sup>49</sup>

The applicant's attorney's office was served with the November 21, 2023, Award. As such, the defendant's failure to serve the applicant's attorney at the address identified in the Stipulations with Request for Award did not result in the applicant or the applicant's attorney not receiving service of the Award.

The record shows that the defendant's failure to serve the applicant's attorney at the address identified in the Stipulations with Request for Award was the result of either negligence, carelessness, or inadvertent. There is no evidence the failure to serve was done for an improper motive or beyond negligence, carelessness, or inadvertence. As such, the failure to serve was not a bad faith action or tactic.

Based on the above, the Undersigned Judge was not in error in not finding that the defendant's failure to serve the applicant's attorney at the address identified in the Stipulations with Request for Award rose to the level of bad faith for which sanctions should be imposed.

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<sup>47</sup> EAMS Doc IDs: 26064698 - 4/18/2018; 26708702 - 7/3/2018; 28458491 - 2/8/2019; 29462949 - 6/11/2019; 30879515 - 11/13/2019; APPLICATION FOR ADJUDICATION

<sup>48</sup> EAMS Doc ID: 77381868, ADJ11921987 - VICTOR DELGADILLO AWARD, Date 11/21/2023

<sup>49</sup> EAMS Doc ID: 77381868, ADJ11921987 - VICTOR DELGADILLO AWARD, Date 11/21/2023

**V**

**RECOMMENDATION**

For the reasons stated above, it is respectfully recommended that the applicant's petition for reconsideration be denied.

***NOTICE IS HEREBY GIVEN that this matter was transmitted to the Reconsideration Unit on November 8, 2024.***

DATE: November 8, 2024

Oliver Cathey

WORKERS' COMPENSATION JUDGE